

**REMARKS****Status of the claims:**

Claims 1, 19, 24-27, 30, 35, and 37 have been amended in the present amendment.

Claims 35 and 37 were previously withdrawn as being drawn to a non-elected invention. Applicants have amended claims 35 and 37 in the present amendment and their current status identifier is "withdrawn-currently amended."

Claims 10-13 were previously canceled. Claims 8, 9, and 29 have been canceled in the present amendment. Claims 16-18 were previously withdrawn by the office as being drawn to a non-elected invention. Applicants have now canceled claims 16-18 in the present amendment. Claim 34 was previously withdrawn as being drawn to a non-elected invention. Applicants have canceled claim 34 in the present amendment.

The restriction Group I, which was elected in the present application, excluded claims 2, 4, 7, 14, 15, 23, and 28. Applicants have not yet withdrawn those claims or canceled them as they conform to the restriction requirement if the present amendment is entered. Accordingly, Applicants believe claims 2, 4, 7, 14, 15, 23, and 28 should be presently pending in the current application. Applicants respectfully request that the Office state that claims 2, 4, 7, 14, 15, 23, and 28 are part of Group I of the elected restriction group and have been considered in the present application, or state why on the record that they are not part of Group I of the elected restriction group.

If the present amendment is entered, claims 1-7, 10, 12, 14, 15, 19-28, 30-33 will be pending in the application.

Applicants respectfully request that the present amendments to the claims be entered because they either place the application in better form for appeal or they place the application in condition for allowance.

## **I. Claim amendments**

Claims 1, 19, 24-27, and 30 have been amended to conform to the restriction requirement of September 6, 2007.

Claim 1 was amended to restrict Z to a 5 membered ring with one nitrogen present. Claim 27 has been amended to recite the depicted five membered ring where  $n=1$ , containing one nitrogen. Claim 29 was canceled in view of the fact that claim 27, from which claim 29 depends, has been amended to recite that  $n=1$ . Claim 30 was amended to delete those compounds where Z was not a 5 membered ring with one nitrogen present.

Claims 1, 19, 24-26, and 27 were amended to remove a 3- to 10-membered heterocyclyl as a substituent of  $R^3$ ,  $R^4$ , or  $R^5$ , and to remove  $R^3$ ,  $R^4$ , or  $R^5$  forming a 3- to 10-membered heterocyclyl, as the restriction requirement stated that Z is five member ring containing one nitrogen and “is the only heterocyclic group present.” Similarly, claim 30 was amended to delete those compounds to remove a 3- to 10-membered heterocyclyl as a substituent of  $R^3$ ,  $R^4$ , or  $R^5$ , and to remove  $R^3$ ,  $R^4$ , or  $R^5$  forming a 3- to 10-membered heterocyclyl, as the restriction requirement stated that Z is five member ring containing one nitrogen and “is the only heterocyclic group present.” Claim 8 was canceled in the present amendment for the same reasons.

The Office Action reminded the Applicant to amend the method claims for potential rejoinder. Applicants have amended claims 35 and 37 in the present amendment and their current status identifier is “withdrawn-currently amended.”

## **II. Claim Rejections – Provisional obviousness-type double patenting over co-pending Application Nos. 11/202,961 and 11/475,456**

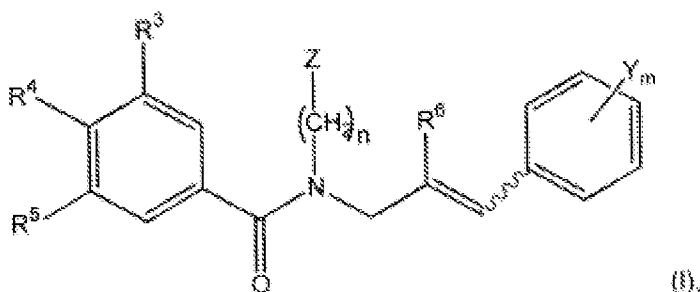
The present application was provisionally rejected in the last Office Action for obviousness-type double patenting over Application Nos. 11/202,961 and 11/475,456. Applicant's arguments about the obviousness-type double patenting were found “persuasive” by the Office, however, the Office Action did not state to whether the arguments were persuasive as to one or both of Application Nos. 11/202,961 and

11/475,456. The Examiner stated that the rejection would be withdrawn at the time of allowance. Therefore, it is the Applicants' understanding that both rejections are still in effect until allowance or a formal and unequivocal withdrawal of the rejection. Applicants therefore maintain the same arguments put forth previously and restate them here for the record:

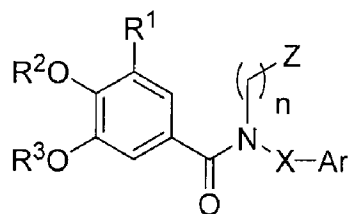
Claims 1-38 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of co-pending application 11/478,456. As this is a provisional rejection and as the '961 application has neither been examined nor allowed, Applicants request withdrawal of this rejection at this time (See MPEP § 804).

Claims 1-38 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of co-pending application 11/202,961. According to MPEP § 804, "nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s)."

The claims at issue are drawn to compounds of the formula:



The claims of the '961 application are drawn to compounds of the formula:



where X is a bond, CH<sub>2</sub> or CH(CH<sub>3</sub>) and Ar is a bicyclic ring.

The claims in the present invention are neither anticipated nor obvious in view of the claims of the '961 application. The examiner asserts that the compounds in both applications are "structurally similar" and that "it would have been obvious to one skilled in the art to prepare the compounds as claimed in the present application containing a five member ring containing one nitrogen." The examiner focuses on the Z substituent. However, this is not the only structural difference between the claimed compounds.

The compounds of the present claims have several other structural differences from those in the '961 application including, at least, (1) the linker between the amide nitrogen and the aryl group is an olefin and (2) the aryl group is monocyclic. There is no evidence of record establishing that a skilled artisan would make one of these three structural changes, never mind all of them.

Applicants also respectfully note that this application was made of record in the '961 application – yet no obvious type double patenting rejection was made there. That is, the examiner of the '961 application did not find the compounds claimed therein obvious in view of the compounds presently claimed – presumably due to the differences noted above.

In view of all of these structural differences, applicants respectfully request that this rejection be withdrawn.

## CONCLUSION

The Examiner is invited to contact the undersigned agent for the applicants via telephone if such communication would expedite this application.

In view of the above amendments and remarks, it is respectfully submitted that the present form of the claims are patentably distinguishable over the art of record and that this application is now in condition for allowance. Such action is respectfully requested.

Respectfully submitted,

October 7, 2008

Date

/EJB/

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